IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

Crl.L.P..No. 36 of 2007()

ST.1621/2004 of J.M.F.C.,AMBALAPUZHA

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PETITIONER/COMPLAINANT

A.C.MOHAN, ANCHIL VEEDU,
ANAPARAMBAL NORTH P.O., THALAVADY,
ALAPPUZHA.

BY ADV. SRI.P.VINODKUMAR

RESPONDENTS: ACCUSED & STATE

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1. K.M.ABRAHAM,
KADAVIL KIZHAKKETHIL, KALLISSERY P.O.,
ALAPPUZHA.

2. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl. L. P. No. 36 of 2007

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Dated this the day of 22nd January,2007

O R D E R

Petitioner was the complainant in S.T.No.1621/2004 on the file of the Court of the Judicial First Class Magistrate Court, Ambalapuzha. The complaint was filed under section 138 of the Negotiable Instruments Act against the 1st respondent alleging that the 1st respondent had borrowed an amount of Rs.1,65,000/- and in discharge of the debt, the 1st respondent issued a cheque for an amount of Rs.1,65,000/- and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund. On the side of the prosecution, the petitioner himself was examined as PW1 and Exts.P1 to P6 were marked. On the side of the defence, DW1, 1st respondent, and DW2 Manager of the bank, were examined. When the 1st respondent was questioned under section 313 Cr.P.C., he denied the allegation against him. According to the 1st respondent, he had no transaction with the petitioner. He was working as Salesman at Mangalya Gold Palace, Chengannur and at the time of joining as Salesman his S.S.L.C. Book was obtained by the management as security. When he wanted to go to Gulf countries, he opened an account in a bank and obtained 10 cheque leaves and the first among the cheque leaves

was given as security and obtained the S.S.L.C. Book. He also stated that except the signature, no other writing in the cheque was made by him and that cheque was used by the petitioner to file the complaint against him.

2. The trial court found that the handwriting and ink used to write the cheque and sign the cheque were different. The trial court also found that the evidence adduced by the 1st respondent was sufficient to rebut the presumption drawn in favour of the complainant.

3. On re-appreciation of the entire evidence, this Court is of the view that the findings entered by the trial court are justifiable. Hence, the leave to appeal is rejected. Accordingly, the petition is dismissed.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.L.P.No. /2006

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Judgment

-12-2006